IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.10488 OF 1998

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

ANWAR HUSSAIN KHARADI
VERSUS
STATE OF GUJARAT & ORS.

Appearance:
MR YS LAKHANI for petitioner
MR VM PANCHOLI for respondents No.1,2 & 3
None present for repondent No.4
MR NK MAJMUDAR for respondent No.5

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 29/03/2000

C.A.V. JUDGMENT

#. Challenge has been made by petitioner to the order of

respondent No.1 dated 1st December 1998 passed in revision application filed by respondent No.5. Under this order, the revision application filed by respondent No.5 came to be allowed and the licence of the petitioner for fair price shop for village Pasnal was ordered to be cancelled and further direction was given to grant licence for that shop to the respondent No.5.

#. The facts of the case are that vide Notification dated 28th September, 1997, applications were invited for allotment of fair price shop for village Pasnal by the concerned authority. In response to that Notification, the petitioner, along with nine others, applied for allotment of fair price shop at village Pasnal. The respondent No.5 also applied for allotment of shop to him. The Taluka Supply Advisory Committee made recommendation in favour of respondent No.5 but the District Supply Advisory Committee and the District Supplies Officer have not accepted this recommendation. They recommended for allotment of fair price shop to the petitioner. In pursuance of that recommendation on 17.11.97, licence has been granted in favour of petitioner for fair price shop at village Pasnal. The respondent No.5, against this order of allotting authority preferred appeal before the District Collector, Panchmahals at Godhara. This appeal came to be rejected on 30th March 1998. The matter was taken before the revisional authority. As stated earlier, the revision application has been allowed and under the impugned order the licence for running of the fair price shop granted in favour of petitioner was cancelled and directions were given for grant of licence for this shop in favour of respondent No.5.

#. Mr.Lakhani, learned counsel for the petitioner contended that since 1997, the petitioner is continuously running this shop without any complaints from consumers under the licence granted to him and the same may not be disturbed. It has next been contended that the respondent No.5 has tampered with the documents. He in fact has not applied for this licence of fair price shop in his individual capacity. This application is filed by him for the Trust and it does not come in the priority above the petitioner. The respondent No.5 was not unemployed Schedule Caste member. In the suit, when injunction has not been granted, he filed revision before the State Government. The State Government has not considered all the relevant aspects of the matter. Lastly, it is contended that the petitioner is residing at village Pasnal. Otherwise also, distance between Pasnal and Godhara is hardly of 12 kms.

#. On the other hand, the learned counsel for respondents No.1 to 4 supported the order passed by the State Government.

#. Mr.N.K.Majmudar, learned counsel for respondent No.5 contends that the suit has been filed but the learned trial court itself has observed that right of appeal is there to the petitioner in the matter. Merely because injunction has not been granted, it cannot be taken to be a case where the respondent No.5 should not have been granted any relief. The respondent No.5 is SC and he applied in his individual capacity which fact is accepted by the original authority. It is a question of fact in which this court, may not interfere. So far as employment is concerned it was not employment in true sense but the respondent No.5 was working to gain experience. Attacking on the application of petitioner Mr.Majmudar contends that he is not resident of village Pasnal and licence should have been given to the local person.

#. I have given my thoughtful considerations to the rival submissions made by learned counsel for the parties.

#. The petitioner is not correct to contend that he is resident of village Pasnal. The revisional authority has considered this aspect and I do not find any perversity in its finding that the petitioner is resident of Godhara. In support of this finding, the revisional authority has relied on documents, namely, school leaving certificate of the petitioner, certificate of socially and economically backward caste dated 19th October, 1992, and the bank balance certificate. From these documents, it is clearly borne out that the petitioner was born and brought up and educated at village Godhara. The petitioner has his bank account also at Godhara. The document which is there in support of his case is the ration card but that is of the year 1997 and possibility of getting this document for getting licence of fair price shop cannot be overruled. The petitioner produced another document to show that he got the shop on rent, but Kanubhai Burabhai from whom this shop is alleged to have been taken on rent has filed an affidavit and denied this fact of tenancy. This evidence which has been referred, considered and relied by the revisional authority cannot be successfully attacked by the learned counsel for the petitioner. On the basis of this evidence, the revisional authority has not committed any error in taking that the petitioner does not belong to

Pasnal. The petitioner was not the only application before the authority concerned for grant of licence of fair price shop. As per petitioner's own case there were in all ten candidates including himself for this fair price shop. It is not the case of petitioner that no other applicant from the village was available. A local person has to be preferred and the petitioner not being a local person, his application could not have been granted. The petitioner was also having his bank account at Godhara. The judgment of the revisional authority to the extent where it relates to the petitioner cannot be said to be illegal or arbitrary.

#. However, the judgment of the revisional authority where it orders for allotment of fair price shop to the respondent No.5 cannot be allowed to stand. The respondent No.5 is though SC, he applied for allotment of fair price shop as a Trustee of the Trust. His application is on the record and from which I find that in item No.1, his name has been mentioned but simultaneously he mentioned as Trustee. In item No.5, the name of the Trust has been mentioned. From this application coupled with the fact that the respondent No.5 has also stated before the authorities that whatever the income he earns from running of this fair price shop will go to the Trust, the revisional authority has committed serious illegality in holding it to be a case of individual application. The revisional authority has not considered this aspect of the matter. The revisional authority has even not referred this aspect. The Trust has no priority in the allotment. It is not case of respondent No.5 that he was the applicant. The respondent No.5 has also admitted as a fact that he is in employment. The certificate of employer of respondent No.5 is there on the record of the special civil application. This certificate reads as under:
S.T.No.C.079870 Dt.5.10.89

NAYANKUMAR AMBALAL PRAJAPATI

Grocery Merchant

Shahera-389210, Dist: Panchmahals

Date:1.10.97

CERTIFICATE

This is to certify that Shri Parmar Sureshbhai Mithabhai, resident of Pasnal, Tal. Shahera, is serving in my shop since last one year. He is honest and hard worker. He is clever and experienced with respect to business.

sd/- illegible

TRUE COPY

#. On 1st October, 1997, the respondent No.5 was in employment of Nayankumar Ambalal Prajapati. This certificate of registration of Trust is there and it was registered on 31st September, 1997. From these facts it is clearly established that respondent No.5 has not applied for this fair price shop in his individual capacity, the Trust is in existence, he was one of the Trustees of the Trust as per his own case, he applied for fair price shop as Trustee of the Trust and the Trust has no priority. The revisional authority, after recording the finding that the petitioner was not eligible for grant of fair price shop for the reasons given could not have passed the order to give directions for allotment of fair price shop in favour of respondent No.5. In such matter, the revisional court should have remanded the matter to the authority concerned or should have given direction for fresh invitation of applications. That has not been done.

##. The net result of the aforesaid discussion is that the order of the revisional authority to the extent where directions were given for allotment of fair price shop to respondent No.5 is wholly perverse and it cannot be allowed to stand. In the result, this special civil application is disposed of in the terms that so far as the order of the revisional authority to the extent it relates to cancellation of licence granted to the petitioner for fair price shop is maintained but the order of revisional authority to the extent where it gives direction to the authority concerned to grant fair price shop to respondent No.5 is quashed and set aside. The competent authority is directed to invite afresh, the applications for grant of licence for fair price shop at village Pasnal. Rule stands disposed of in aforesaid terms. Interim relief earlier granted stands vacated. No order as to costs

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(sunil)